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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

09/739,844

12/20/2000

Rudy Bonefas

003636.0099

3893

7590 06/23/2010  
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EXAMINER

PHILLIPS, HASSAN A

ART UNIT

PAPER NUMBER

2451

MAIL DATE

DELIVERY MODE

06/23/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/739,844 | <b>Applicant(s)</b><br>BONEFAS ET AL. |  |
|                              | <b>Examiner</b><br>HASSAN PHILLIPS   | <b>Art Unit</b><br>2451               |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 09 April 2010.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 19, 21-24, 26-29 and 31-33 is/are pending in the application.

    4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☒ Claim(s) 24 and 26-28 is/are allowed.

6) ☒ Claim(s) 19, 21-23, 29 and 31-33 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \*    c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/2/10

4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date, \_\_\_\_\_.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This action is in response to communications filed April 9, 2010. Claims 19, 21-24, 26-29 and 31-33 remain pending in the application, with claims 1-18, 22, 25 and 30 being canceled previously.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 3, 2010 has been entered.

### ***Information Disclosure Statement***

3. The information disclosure statement filed February 2, 2010, has been received and considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 29, 31-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. With regards to claims 29 and 31-33, claim elements "means for establishing" and "means for determining" are means plus function limitations that invoke 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. After a review of the specification, it is unclear to the examiner what structure, material, or acts disclosed in the written description of the specification perform the claimed function.

7. Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132 (a)).

8. If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material or acts to the claimed function, without introducing any new matter (35 U.S.C. 132 (a)); or

(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP 2181 and 608.01(o).

### ***Claim Rejections - 35 USC § 101***

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 19, 21-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

11. With regards to claim 19, although the claim recites a "message router", the claimed message router is merely comprised of a "load balancer module" and a "routing module". Giving broadest reasonable interpretation to the claims a "module" may comprise of software. Software fails to fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101.

12. Claims 21-23 depend from claim 19 and fail to remedy the deficiencies indicated above.

***Allowable Subject Matter***

13. Claims 24, 26-28 are allowed.

14. The following is a statement of reasons for the indication of allowable subject matter: Claims 24 and 26-28 have been amended to clearly define applicant's claimed invention, thereby distinguishing the claimed invention from the teachings of the cited prior art. More specifically, the prior art of record fails to expressly disclose the invention as a whole including: routing a message from a message router to a particular protocol gateway based on (i) a determined least recently used protocol gateway and (ii) a particular protocol utilized by a client device associated with the message, as recited in independent claim 24.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see PTO form 892.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASSAN PHILLIPS whose telephone number is (571)272-3940. The examiner can normally be reached on M-F 9a-5:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HASSAN PHILLIPS/  
Primary Examiner, Art Unit 2451